

Special Civil Application No 3138 of 1983

Date of decision: 19th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

JAYANTILAL DAHYABHAI

vs

STATE OF GUJARAT

Appearance:

Shri G.R.Udhwani, Advocate, for Shri K.G.Vakaria, Advocate, for the Petitioners.

Shri D.N.Patel, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA

19th February 1996

ORAL JUDGEMENT

The order passed by the District Development Officer at Jamnagar (respondent No.2 herein) on 29th July 1982 as affirmed in revision by the order passed by the Deputy Secretary (Appeals), Revenue Department at Ahmedabad on behalf of the State

of Gujarat (respondent No.1 herein) on 31st December 1982 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.2 did not accept the application made by the petitioners for conversion of one parcel of land bearing survey No.1991/2 admeasuring 4 acres 02 gunthas situated at Khambalia (the disputed land for convenience) from its agricultural use to non-agricultural use.

2. The facts giving rise to this petition move in a narrow compass. The disputed land originally belonged to one Harijan Maya Lakha. It was a new tenure land. He however appears to have borrowed money from the Gujarat State Co-operative Land Development Bank Ltd. by mortgaging the disputed land with it. It appears that he was unable to repay it with interest. Thereupon, it was sold in public auction for realisation of the dues of the bank. It appears that the petitioners purchased it in the public auction. It may be mentioned at this stage that one of the terms of the public auction was that the disputed land would be sold to the auction purchasers as an old tenure land. By his order passed on 3rd June 1980, the Deputy Mamlatdar and Special Recovery Officer of the Bank (respondent No.3 herein) declared the petitioners to have purchased the disputed land in the public auction. Its copy is at Annexure-A to this petition. Pursuant thereto, its possession was handed over to the petitioners and a copy of the proceeding thereof is at Annexure-B to this petition. The necessary entry pursuant thereto was effected in the record of rights. It appears that the petitioners applied on 27th April 1982 to respondent No.2 for grant of what is popularly known as the N.A.Permission (permission for its non-agricultural use). Respondent No.2 found the disputed land to be of a new tenure. Its conversion from new tenure to old tenure would involve payment of premium by the person seeking such permission. Thereupon, by his communication of 26th July 1982, respondent No.2 called upon the petitioners to remain present with respect to payment of such premium. Its copy is at Annexure-D to this petition. After hearing the petitioners, by his order passed on 29th July 1982, respondent No.2 refused to entertain the application for the N.A.Permission till the payment of premium for its conversion from new tenure to old tenure was paid. Its copy is at Annexure-E to this petition. By one communication of 5th August 1982 addressed to respondent No.2, the petitioners tried to clarify the position but to no avail. Its copy is at Annexure-G to this petition. Another copy of such communication of 30th August 1982 addressed to respondent No.2 herein also proved an exercise in futility. Thereupon, the petitioners approached respondent No.1 under section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). By the order passed on 31st December 1982 on behalf of respondent No.1, the revisional application came to be rejected. Its copy is at Annexure-I to this petition. The aggrieved petitioners have

thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-E to this petition as affirmed in revision by the order at Annexure-I to this petition.

3. It is not in dispute that the petitioners purchased the disputed land in public auction on the condition that they would hold it as an old tenure land. That was in consonance with the explanatory Circular issued by and on behalf of respondent No.1. Its copy is at Annexure-J to this petition. It was also in consonance with the Government Resolution passed on 24th November 1970, an extract of which is at Annexure-F to this petition. It appears that, pursuant to the order at Annexure-A to this petition, the necessary mutation entry in favour of the petitioners was effected in the revenue records and it appears that the old tenure of the land was mentioned therein. That appears not to have been noticed by respondent No.2 and that appears to be the reason why respondent No.2 treated it as a new tenure land. It transpires from the order at Annexure-I to this petition that the revisional authority has misconstrued the Circular at Annexure-I to this petition. It clearly transpires from Explanation 5 contained therein that the nature of the holding (whether new tenure or old tenure) in the case of the auction purchaser would depend upon the terms and conditions of the auction in which it was purchased by the auction purchaser. It clearly transpires from the order at Annexure-A to this petition that under the terms and conditions of the auction the auction purchasers were to get the disputed land as an old tenure land and not as a new tenure land. In that view of the matter, the author of the impugned order at Annexure-I to this petition was not justified in coming to the conclusion that it was a new tenure land in the hands of the petitioners. It was not necessary for him to have found fault with the author of the order at Annexure-A to this petition as the latter had acted in consonance with the Circular at Annexure-J to this petition in the light of the Government Resolution at Annexure-F to this petition.

4. In view of my aforesaid discussion, I am of the opinion that both respondents Nos.2 and 1 were not right in treating the disputed land to be a new tenure land in the hands of the petitioners. It is required to be treated as an old tenure land in their hands. In that view of the matter, no premium for conversion from new tenure to old tenure is required to be levied on the petitioners. Neither respondent No.2 nor respondent No.1 was justified in claiming such premium for conversion from new tenure to old tenure. I am therefore of the opinion that the impugned order at Annexure-E to this petition as affirmed in revision by the impugned order at Annexure-I to this petition cannot be sustained in law. It has to be quashed and set aside. The application made by the petitioners for the N.A.Permission

shall have to be entertained as if the disputed land in their hands is of old tenure and not of new tenure. The matter will have to be remanded to respondent No.2 for restoration of the proceeding to file and for his decision on the N.A.Permission application according to law in the light of this judgment of mine.

5. In the result, this petition is accepted. The order passed by the Deputy Development Officer at Jamnagar (respondent No.2 herein) on 29th July 1982 at Annexure-E to this petition as affirmed in revision by the order passed by the Deputy Secretary (Appeals), Revenue Department at Ahmedabad on behalf of the State of Gujarat on 31st December 1982 at Annexure-I to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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